

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 39

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PIERRE LASSON, YVES-JULIEN LAMBERT,
YVES VANDERVEKEN, and NESTOR MAQUET

Appeal No. 1998-0652
Application No. 08/188,417

HEARD: Feb. 21, 2001

Before GARRIS, TIMM, and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1 through 5 which are all of the claims remaining in the application.

The subject matter on appeal relates to a polymer composition consisting essentially of at least one

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polyvinylidene fluoride homopolymer, at least one thermoplastic copolymer of vinylidene fluoride and a plasticizer. Further details of this appealed subject matter are set forth in representative independent claim 1 which reads as follows:

1. A polymer composition consisting essentially of, by weight:

(A) approximately from 60 to 80% of at least one PVDF homopolymer;

(B) approximately from 20 to 40% of at least one thermoplastic copolymer of vinylidene fluoride and of at least one other fluoromonomer, present in this copolymer in weight proportions of approximately 5 to 25% and

(C) approximately from 5 to 20%, relative to the total weight of the polymers (A) and (B), of a monomeric or polymeric plasticizer.

The reference set forth below is relied upon by the examiner as evidence of obviousness:

Budzinski et al. (Budzinski)	3,760,724	Sep.
25, 1973		

The claims on appeal are rejected under 35 U.S.C. § 103 as being unpatentable over Budzinski.

We refer to the several briefs and answers for an exposition of the opposing viewpoints expressed by the

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appellants and by the examiner concerning the above noted rejection.

OPINION

This rejection cannot be sustained.

As correctly argued by the appellants in their briefs, Budzinski contains no teaching or suggestion of a polymer composition which includes at least one polyvinylidene fluoride homopolymer and at least one thermoplastic copolymer of vinylidene fluoride. We appreciate that the paragraph bridging columns 2 and 3 of this patent describes patentee's plastisol composition as containing various types of polyvinyl resins including polyvinylidene fluoride and copolymers thereof. However, the examiner refers to nothing and we find nothing in this reference which, in our view, would have suggested using any of these resins in combination much less using polyvinylidene fluoride homopolymer in combination with a thermoplastic copolymer of vinylidene fluoride as required by the appealed claims.

With the foregoing in mind, it is apparent that the applied reference is likewise deficient in that it contains no teaching or suggestion concerning the here claimed amounts of

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the aforementioned polyvinylidene fluoride homopolymer and the thermoplastic copolymer of vinylidene fluoride. In this regard, we emphasize and reiterate the appellants' point that their claimed composition is intended for the manufacture of pipes which convey hydrocarbons whereas the composition of Budzinski is intended for use as a non-volatile, fast-set, heat-dry plastisol vehicle for printing inks (e.g., see lines 30 through 59 in column 2). Because these respective compositions are formulated for such widely disparate uses, no basis exists for concluding that the here claimed polymer amounts for the appellants' pipe-making composition would have been achieved by an ordinarily skilled artisan in the course of determining the polymer amounts needed to achieve the printing ink-making use of patentee's composition. Analogous reasoning applies to the plasticizer amounts required by the independent claim on appeal.

Yet another deficiency of the Budzinski reference relates to the required presence of polystyrene in patentee's composition. According to the appellants, the "consisting essentially of" language of appealed independent claim 1 excludes polystyrene from their claimed composition. In this

regard, the examiner does not argue that it would have been obvious to remove polystyrene from Budzinski's composition but instead takes the basic position that polystyrene is not excluded by the aforementioned claim language. In particular, the examiner seems to believe that no showing has been made that the presence of polystyrene would affect the basic and novel characteristics of the here claimed composition.¹

From our perspective, however, Budzinski's teaching, that polystyrene enables patentee's vinylidene fluoride polymer and plasticizer combination to be used as a plastisol vehicle for printing inks, suggests that polystyrene would have a similar affect on the vinylidene fluoride polymer/plasticizer combination defined by appealed claim 1. Plainly, the transformation of the here claimed composition into a plastisol would be antithetical to the pipe-making use intended by the appellants for this composition. It follows that the Budzinski reference itself would appear to show that the presence of polystyrene would materially affect the basic

¹ For example, see In re Janakirama-Rao, 317 F.2d 951, 954, 137 USPQ 893, 896 (CCPA 1963) ("consisting essentially of" excludes from a claimed composition ingredients which materially affect the basic and novel characteristics of the composition).

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and novel characteristics of the appealed claim 1 composition and thus is excluded by the "consisting essentially of" language of this claim.

In light of the foregoing, we are convinced that the reference evidence adduced by the examiner fails to establish a prima facie case of obviousness within the meaning of 35 U.S.C.

§ 103. As a consequence, the examiner's section 103 rejection of the appealed claims as being unpatentable over Budzinski cannot be sustained.

The decision of the examiner is reversed.

REVERSED

	Bradley R. Garris)	
	Administrative Patent Judge)	
)	
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)	
	Catherine Timm)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES

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)
Beverly A. Pawlikowski)
Administrative Patent Judge)

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